

Resolving Taxpayer Problems Resolve them, one way or another, but Resolve Them!

Written Testimony of
Bryan E. Gates, EA
National Council for Taxpayer Advocacy

Practitioners do not care whether Local Taxpayer Advocates and their staff members have *direct* or *indirect monitoring authority* to resolve taxpayer hardship. Practitioners simply want taxpayer hardship to be resolved quickly and efficiently. Practitioners want IRS operations personnel to have the same respect and appreciation for Taxpayer Advocate Service personnel as they, themselves, have.

Contents:

- Issue & Observations - 1
- Tax Practitioners Remember *Taxpayer Service, Problem Resolution* and *Ombudsmen* – now they have *The Taxpayer Advocate Service* - 3
- The Future of the National Taxpayer Advocate and the Taxpayer Advocate Service - 7
- Local Taxpayer Advocate (LTA) Offices - 8
- Typical Hardships Encountered by Represented Taxpayers - 8
- IRS Internal Guidelines for Issuing Taxpayer Assistance Orders - 8
- Conclusion - 10

Issue: Is the Taxpayer Advocate Service interacting *effectively* with the IRS operating divisions through its Local Taxpayer Advocates (LTAs) to resolve taxpayer problems?

Observations: of federally authorized tax practitioners solicited from various parts of the country regarding their Local Taxpayer Advocate:

- “Do not know her”

-- Southeast

- “I know who she is, however, she has NEVER gotten personally involved with any issues that I have taken to the Advocate's office”

-- Northeast

- “I have done business with her in the past. I haven't used her for anything recently. She was with problems resolution before being the LTA. She has been with the IRS for a long time. She was helpful in several cases when she was the PRO. I think her experience there and her tenure with the service makes her more proactive than some other LTAs. She wasn't hesitant to take on collections if you had a valid position. I am not contacting the LTA office. Most of my collection issues are getting resolved in Appeals. This is still working well for me. You can at least relate that if the LTA would get more involved in resolving levy issues, we wouldn't have to clog up Appeals with CDP hearings just to keep our clients from being levied while their problems can be resolved. We seem to be able to find a way to deal with the issues at Appeals, when the lower levels won't consider the same options. Maybe if the LTA could work the issues more along the line of the Appeals officers, we would only have to go to Appeals in extenuating situations”

-- Southeast

Testimony IRS Oversight Board – January 27, 2002
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- *“I tried working something with her but she's the boss and doesn't do that kind of stuff and neither did her staff. Finally solved thru another LTA”*

-- Northeast

- *“He worked very hard with me on a case. Got all penalties abated. However, couldn't overcome appeals and the OIC was denied. Seems like a decent sort. I usually take my cases to the Service Center”*

-- Northeast

- *“I have talked with this person but never face to face. I get monthly updates on people so she or some TA seems to keep those IRS employees working on a problem and informed that we are still interested. We did solve an Innocent Spouse one and settled. I have quite a few "Due Process" but I have not needed to get the TA on those. Generally, I have not needed to use the TA except when all other routes blocked such as my innocent spouse case. I have found collection problems easy to solve without a TA. Perhaps her best use is to be available. that may help explain why we are getting good service from the IRS”*

-- Northwest

- *“I deal with our very LOCAL Taxpayer Advocate. He always assigns it to one of his people and they jump right on it. I do not always think they are taking the taxpayer's side (or mine). They seem intimidated by IRS rules and regulations and often I have to cite and explain what they are allowed to do and insist on it. They are a little timid, but when I insist, they usually give in. I have gotten to know him on a first name basis. He is very friendly and helpful when he can be, but he does not handle the file himself. As I said, he always assigns it to someone in his department”*

-- Northeast

- *“I have not had any experience with her”*

-- Southeast

- *“I have not worked with him directly. I have worked with people who work for him with success”*

-- Northeast

- *“Know this person well. Very cooperative and helpful, every time I needed help”*

-- Northeast

- *“I do not know this person and my clients problems have still not been resolved! I keep getting the run around by the T/P Advocates Office, so hopefully tomorrow, I will make a personal appearance at the I.R.S. walk in area. I believe this will be the quickest possible remedy to my clients problem at this time since it takes longer to deal with the T/P Advocates office than it will take to drive eighty miles round trip to the IRS Office. This past Friday morning the TP's Wife called me actually crying because they cannot even afford to buy food! The T/P Advocates Office says this situation does not meet the criteria for relief! I totally believe the T/P Advocate Program is of no benefit whatsoever”*

-- Southwest

- *“Only know on limited basis”*

-- Southwest

Testimony IRS Oversight Board – January 27, 2002
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- *“I have worked with staffers at the local Taxpayer Advocates office. Both are very good. I have heard of LTA, but have not had experience with her techniques. I’ve known both staffers for years so prefer to use them”*

-- West

- *“We have a new LTA and after my last 3 conversations with her, I believe that she is involving herself when her help is sought out. She is a far better LTA than the last one who was retired. Staffers have voiced frustration to me several times about the lack of their authority to really do much of anything. Morale in this office has been pretty dismal over the last year. Perhaps under the new LTA, it will get better. Real authority to help taxpayers would go a long way to improving morale, their effectiveness and taxpayer's situations when necessary. One point I would like to bring up; I sought a CNC status on an unemployed taxpayer through ACS and was granted it on 11/27/02. It was changed later that day by a manager, who cannot be identified as usual, who cited that because the taxpayer had equity in their home, they were not entitled to CNC. No calls were made to me to tell me of the change, and I only learned about it when a bank levy was served. TAS did put a hold on the account, but too late. The 911 was sent to Jax by fax on 12/20/02 but not worked until 2 Jan 03, and by then the taxpayer's remaining funds had been sent to the IRS. The delay in working the case has brought rather dire consequences to the taxpayer that should not have happened”*
- *“He is a good man. He took his current position after many years in Collections. Some time ago, he was very active. He attended all of the liaison meetings and even headed them up for the IRS. In the last year or so, he has dropped off the face of the earth. I haven't seen him at all. Nor have I seen much effort to promote TAS. Whatever happened to him is too bad. ROs and RAs are fairly disrespectful of TAS because they know it has no authority. My impression (from a limited number of contacts) is that TAS personnel do not perceive themselves as having any authority or much ability to get things done”*

-- Midwest

- *“Our LTA does participate in practitioner education programs. She is accessible and calls me to follow up on cases. I cannot say if she works to increase the visibility of the Taxpayer Advocate Service. I have not noticed any local advertising or posters to spread the word”*

-- West

Tax Practitioners Remember *Taxpayer Service*, *Problem Resolution* and *Ombudsmen* – now they have *The Taxpayer Advocate Service*

The IRS began the ***Taxpayer Service Program*** administratively as part of IRS operations in July, 1963, nearly forty years ago. This was the dawning of an era which would accept the concept that taxpayers have rights. IRS later established a ***Problem Resolution Program*** within the IRS to supplement the Taxpayer Service Program. The problem resolution program was extended nationwide in 1977 to provide special attention for taxpayers' problems and complaints which had not been resolved promptly or properly through normal procedures. IRS Problem Resolution Program personnel analyzed taxpayer problems to determine their underlying causes and instigated corrective action to prevent their recurrence throughout the Service. The IRS Problem Resolution Program became very successful. Taxpayer and taxpayer representative satisfaction with the program was unprecedented. Taxpayer problems and taxpayer rights were finally taken seriously. In 1979, the Service established a ***Taxpayer Ombudsman*** in the Office of the IRS Commissioner. The Taxpayer Ombudsman reported directly to the Commissioner and,

therefore, had the authority to penetrate organizational barriers quickly and resolve both individual taxpayer problems and systemic problems. The Ombudsman, who occupied a *Senior Executive Service* position, administered the nationwide Problem Resolution Program; represented taxpayer interests and concerns within the IRS decision-making process; reviewed IRS policies and procedures for possible adverse effects on taxpayers; proposed ideas on tax administration that would benefit taxpayers; represented taxpayers' views in the design of tax forms and instructions; and suggested changes to proposed or existing legislation as the taxpayers' advocate.

Even with the success of these initiatives, IRS officials have continuously expressed concern with the concept of a political appointee functioning as an advocate for taxpayers' rights who, would effectively, have some independent power to administer the tax law. IRS officials have been concerned that such independent power would not provide a proper balance between protecting the Government's and taxpayers' interests and but, instead, would open up dangerous potential for political abuse of the tax system. IRS officials also have believed that an independent authority, would be less effective in working within the Service to resolve individual taxpayer problems and systemic problems. Specifically, IRS operating officials have expressed the opinion that granting independent authority to an Ombudsman type position might result in considering only taxpayers' and not the Government's interests which they believe could seriously impair the Service's ability to collect revenue 1/. Such concern continues within the IRS Operating Divisions 2/.

Congress also took interest in taxpayer rights with the Omnibus Taxpayer Bill of Rights in 1988 (Omnibus Taxpayer Bill of Rights, Pub. L. No. 100-647) which included a statutory right to for taxpayers to be represented before the IRS. Congress passed additional taxpayer protections in Taxpayer Bill of Rights 2 in 1996 (Pub. L. 104-168). Despite the concerns of IRS operations personnel, Congress determined that Taxpayer Advocate offices should operate independently of any other Internal Revenue Service office and report directly to Congress through a National Taxpayer Advocate 3/. Congress developed the concept of a statutory office dedicated to preserving T/P rights and both solving problems that T/Ps encounter and preventing problems before they arise 4/. The concept became law as part of the Internal Revenue Service Restructuring and Reform Act, Pub. L. No. 105-206 (1998) which revised section 7803 to the Internal Revenue Code. Taxpayers now enjoy a comprehensive set of statutory protections enacted over an unmatched ten year period of Congressional concern. Taxpayer representatives continue to invoke and assert these rights in behalf of their clients.

IRC Sec 7803 revised established in the Internal Revenue Service an office known as the *Office of the Taxpayer Advocate* which is under the supervision and direction of an official to be known as the *National Taxpayer Advocate*. Practitioners realize that although **a child of Congress**, the National Taxpayer Advocate is in the *custody* of the IRS. The National Taxpayer Advocate reports to Congress but is directly employed by and supervised by the Commissioner of Internal Revenue. The National Taxpayer Advocate is appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the IRS Oversight Board and is to have both a background in customer service as well as tax law and experience in representing individual taxpayers. It is the statutory function of the Office of the Taxpayer Advocate to:

- assist taxpayers in resolving problems with the Internal Revenue Service;
- identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
- propose changes in the administrative practices of the Internal Revenue Service to mitigate problems; and
- identify potential legislative changes which may be appropriate to mitigate problems.

The National Taxpayer Advocate has the responsibility and authority to appoint local taxpayer advocates with at least one (1) such advocate for each State and to evaluate and take personnel actions including dismissal with respect to any employee of any local office of a taxpayer advocate. The National Taxpayer Advocate may consult with the appropriate supervisory personnel of the Internal Revenue Service in carrying out the National Taxpayer Advocate's responsibilities. Each local taxpayer advocate:

- reports to the National Taxpayer Advocate or delegate;
- consults with the appropriate supervisory personnel of the IRS regarding the daily operation of the local office of the taxpayer advocate;
- notifies taxpayers ***that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate***
- exercises discretion to or not to disclose to the Internal Revenue Service contact with, or information provided by taxpayers, and
- maintains a separate phone, facsimile, and other electronic communication access, and a separate post office address.

Upon application filed by a taxpayer with the Office of the Taxpayer Advocate pursuant to Internal Revenue Code section 7811, the National Taxpayer Advocate may issue a *Taxpayer Assistance Order* if he or she determines the ***taxpayer is suffering or about to suffer a significant hardship*** as a result of the manner in which the internal revenue laws are being administered or the taxpayer meets other requirements as are set forth in regulations. A significant hardship, by statute, includes:

- an ***immediate threat of adverse action***;
- a ***delay of more than 30 days in resolving taxpayer account problems***;
- the ***incurring by the taxpayer of significant costs*** (including fees for professional representation) if relief is not granted; or
- irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

The National Taxpayer Advocate may also take action in the absence of an application. In cases where IRS operation employees are not following applicable published administrative guidance, including the *Internal Revenue Manual*, the National Taxpayer Advocate is required by the statute to construe the factors in determining whether to issue a taxpayer assistance order in the manner most favorable to taxpayers. The terms of a Taxpayer Assistance Order may require IRS operations personnel, within a specified time period, to:

- release property of the taxpayer levied upon or
- to cease any action, refrain from taking any action or take any action as permitted by law.

When the IRS can administratively implement any necessary change by amending current policies and/or procedures, an advocacy issue may exist. An *advocacy issue* is an underlying problem or issue that creates disservice or inequity to taxpayers or otherwise adds to taxpayer burden. An *advocacy submission* is an idea, suggestion, or problem report that may lead to an *advocacy project* which could result in a change in current legislation, improvement in taxpayer treatment or service, or a reduction in taxpayer burden. An *advocacy proposal* is a formal, written memorandum of a recommended change that is presented to an IRS Operating Division after completion of an **Administrative Advocacy Project**. A *legislative proposal* is a formal, written recommendation for a change to an existing law or for enactment of a new law presented to the National Taxpayer Advocate after completion of a **Legislative Advocacy Project**. **Advocacy Initiatives** are outreach initiatives taken to detect and avoid potential disservice to taxpayers. These proactive or preventive actions involve an advocacy presence in matters such as program, policy, and project planning and the review of forms, publications, notices to represent the taxpayers' viewpoint. The goal of an Advocacy Initiative is to improve taxpayer service, improve taxpayer equity (or fairness), or reduce taxpayer compliance burdens. Some problems can be resolved administratively by the IRS implementing a procedural change, while others can be resolved only by enactment of legislation to change the current tax code. Issues that adversely impact taxpayers may be identified in many venues, including: taxpayers, themselves, tax practitioners, IRS personnel, IRS advisory groups and others. When developing an issue for an advocacy submission, the Taxpayer Advocate Service expects that at least one of the following advocacy criteria is met:

- Prevention or reduction of taxpayer burden
- Protection of taxpayer rights
- Prevention or elimination of inequitable treatment
- Provision of an essential service to taxpayers

The result of completing and implementing an administrative advocacy project, according to IRS guidelines, is the prevention, reduction, or elimination of the problems taxpayers encounter in the course of complying with their federal tax obligations. An advocacy project is appropriate when the IRS can administratively implement any necessary change by amending current policies and/or procedures. Administrative change projects:

- identify and address systemic and procedural problems,
- analyze underlying causes of the problems, and
- propose appropriate corrective action.

The Future of the National Taxpayer Advocate and the Taxpayer Advocate Service

Practitioners question whether any individual can work for the IRS Commissioner and report the failings and short comings of the IRS Commissioner's other 90,000 or so employees to Congress remains to be seen. The reporting responsibility is compounded since the same individual has a statutory duty to supervise a small but nationally disbursed staff of procedural specialists charged with the duty of assisting individual and specific taxpayers resolve individual problems with IRS operations personnel. This case work involves differences of opinions and disputes regarding a myriad of problems surrounding tax return processing, accounts management, reporting and paying enforcement, case settlements, and much more, all of which can be elevated to the National Taxpayer Advocate's plate. These cases produce an ongoing discussion among IRS operating division personnel, Taxpayer Advocate Service personnel, and taxpayers and their representatives as to the authority delegated to Local Taxpayer Advocates to resolve cases directly or to insure that they are resolved under Taxpayer Advocate Service scrutiny. In addition, the successful National Taxpayer Advocate must have a superior presence before Congress when testifying about his or her employer's performance. None of this takes into consideration the possible objections his or her positions could receive from the Treasury Secretary who appoints the National Taxpayer Advocate or the IRS Oversight Board which recommends candidates. Fortunately, the first and former occupant of the position is still alive and kicking and so is the incumbent.

Practitioners have come to believe that taxpayer advocates by any name who serve taxpayers suffering hardship of any nature as a result of tax law administration are essential. Practitioners and the taxpayers they serve suffer additionally when Taxpayer Advocates encounter barriers to the swift resolution of hardships. Accordingly practitioners, and in particular practitioners who support the Taxpayer Advocate Service through the National Council for Taxpayer Advocacy, agree with the conclusions of the IRS Oversight Board expressed in its September, 2002 Report of the National Taxpayer Advocate that, "no other unit or function is more important."

Footnotes:

1. Commissioner Roscoe Egger testimony before Congress
2. "...we are firmly committed to implementing the concept of TAS, as we believe Congress intended in RRA, as an arm of the IRS to assist and advocate for taxpayers without falling into the trap of becoming a parallel enforcement arm." – Charles O. Rossotti, IRS Commissioner – Memorandum for Steve Nickels IRS Oversight Board September 5, 2002
3. Senate Committee Report S. Rep. No. 105-174 ... Conference Committee Report H.R. Conf. Rep. No. 105-599
4. Senate Committee Report S. Rep. No. 105-174

Local Taxpayer Advocate (LTA) Offices

IRM 13.1.1.2.4 (10-01-2001)

The TAS has at least one Local Taxpayer Advocate located in each of the 50 states, as well as one in each campus. All LTAs report directly to the 9 area directors and are **responsible for resolving all TAS cases**. In addition, the local advocates **are the liaisons with practitioner communities within their area** and with the congressional staffs for constituent issues. They **educate the public about the role of the advocate** and solicit feedback from them on recurring problems with IRS systems and procedures.

Typical Hardships Encountered by Represented Taxpayers

- Misuse of math error assessment authority
- Improper investigation of information reports
- Improper examination activity
- Misuse of summons authority
- Incorrect Collection Notices
- Improper Levy
- Unnecessary Levy
- Incorrect or Improper Lien
- Collection Due Process hearing shortcomings
- Improper consideration of installment payment proposals and compromise proposals
- Inappropriate assertion of penalties
- Inability to obtain information
- Lack of access to IRS service center operations and ACS
- Unreasonable delay in case actions

IRS Internal Guidelines for Issuing Taxpayer Assistance Orders (TAOs)

In general, Internal Revenue Code section 7811 authorizes the National Taxpayer Advocate to issue a TAO where he or she determines a taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS. The statute also provides that only the Commissioner, the Deputy Commissioner or the National Taxpayer Advocate may modify or rescind a TAO. Pursuant to IRS Delegation Order 232, the authority to issue a TAO is delegated by the National Taxpayer Advocate to Taxpayer Advocate Area Directors and Local Taxpayer Advocates with respect to matters in their areas of responsibility.

Before considering issuance of a TAO, Taxpayer Advocates are expected to continue their longstanding practice of ***attempting to resolve cases through a process of consultation with the IRS organizational unit having primary responsibility for the case***. Based on past experience, the Service anticipates that the vast majority of cases will continue to be resolved promptly and fairly through informal consultation and communication between employees of the Taxpayer Advocate Service and employees of other IRS organizational units.

- A TAO may be issued to resolve *a case that cannot be satisfactorily resolved after a reasonable process of consultation.*
- A TAO may be issued if the Taxpayer Advocate Service determines that:
 - (a) the taxpayer is suffering or is about to suffer a significant hardship if relief is not granted and
 - (b) the taxpayer is properly entitled to relief under the law.

IRC section 7811 authorizes a TAO to be issued for either of two purposes:

- (a) to direct that the primarily responsible IRS organizational unit take a specific action in the case - **Direct TAO** - or,
- (b) to direct that the unit review, expedite consideration of or reconsider a taxpayer's case - **Review TAO**.

Direct TAO and **Review TAO** clarify how TAOs may be used by the TAS.

Direct TAO

A Direct TAO may be issued to direct that the primary IRS organizational unit take an action that is specifically authorized by IRC section 7811(b). For example, a Direct TAO may order that an IRS organizational unit release a taxpayer's property from a levy. A Direct TAO may only require actions that are correct under the law and may not be issued to determine the merits of a taxpayer's liability, or to overturn or circumvent any established process for administrative or judicial review of a taxpayer's case.

Review TAO

A Review TAO may be issued to require that the organizational unit with primary responsibility for a taxpayers' case

- expedite consideration of the case,
- reconsider its determination in the case or
- review the case at a higher level of that organizational unit.

A Review TAO may be issued to any IRS operational unit (including the IRS Office of Appeals and the IRS Office of Chief Counsel, but excluding the Criminal Investigation Division) and may cover any aspect of the case (including a determination of the merits of a taxpayer's liability). A Review TAO may ***direct that IRS enforcement action be held in abeyance pending completion of the reconsideration process.*** The primarily responsible IRS organizational unit will be expected generally to follow this direction unless there are compelling and exigent circumstances that require immediate action (e.g., imminent expiration of the statute of limitations may require issuance of a statutory notice of deficiency).

Conclusion

Practitioners are generally surprised by the extremely low number of Taxpayer Assistance Orders actually issued by Local Taxpayer Advocates. It appears that most Local Taxpayer Advocates are carrying out their responsibilities and serving taxpayers who encounter hardship, one way or another, without actually using their statutory authority to issue such orders. This is a credit to their resourcefulness since our NCTA members recite many instances of LTAs and their staff members who are subjected to intimidation, frustration, and resentment by IRS personnel in the operating divisions and other functions. Our members report experiences where LTA staff members are unable to gain access to IRS operations such as math error resolution and automatic underreporter units and, most importantly, automated collection system (ACS) units. In addition, members report experiences where IRS operations personnel have expressed resistance and resentment when LTA involvement has been requested. Practitioners do not care whether LTAs and their staff members have *direct* or *indirect monitoring authority* to resolve taxpayer hardship. Practitioners simply want taxpayer hardship to be resolved quickly and efficiently. Practitioners want IRS operations personnel to have the same respect and appreciation for Taxpayer Advocate Service personnel as they, themselves, have.

Practitioners regard personnel of the Taxpayer Advocate Service in much the same way as they understand the functioning of patient advocates in large hospital operations. They do not regard patient advocates as *a second or parallel set of doctors and nurses*. Instead, they regard them as they regard personnel of the Taxpayer Advocate Service: ***impartial evaluators capable of determining an appropriate course of action in the face of hardship-producing circumstances***. Practitioners would not expect a patient advocate to complete an amputation of the correct leg after a surgeon begins to amputate the wrong leg but they would expect hospital operations personnel to appreciate and cooperate with the role of the patient advocate as a problem evaluator without intimidation, frustration, or resentment. Patient advocates who evaluate judgmental or systemic shortcomings in hospital operations brought to their attention are not condemned and shunned but, instead, are appreciated and respected. Practitioners support the concept of taxpayer advocacy and they expect that Local Taxpayer Advocates and their staff members will be given the respect their role deserves. In return, they expect the National Taxpayer Advocate and her management staff to recruit only truly qualified and dedicated persons for Local Taxpayer Advocate positions. Persons incapable of performing at expected levels should be replaced promptly. An operation as important as the Taxpayer Advocate Service should be staffed by capable and dedicated employees who earn the respect of all by performing without barriers as impartial advocates.

The National Council for Taxpayer Advocacy

The *National Council for Taxpayer Advocacy* (NCTA) is a private, informal consortium of federally authorized tax practitioners dedicated to the enhancement of taxpayer rights. The Council exists to foster excellence in professional performance for the public good by providing a forum to identify, discuss, and make recommendations regarding the causes of recurring taxpayer problems in their relationships with the Internal Revenue Service.

The *National Council for Taxpayer Advocacy* is a professional association of federally authorized tax practitioners who are particularly active in the field of taxpayer representation. The Council was founded in 1996 and currently has members nationwide who are in private practice. Members are chosen by their peers in recognition of their outstanding reputation, established expertise in taxpayer representation and demonstrated commitment to the improvement of taxpayer advocacy. The Council promotes the study of taxpayer rights and seeks methods for improving the operation and administration of our national taxpayer advocate service. The members meet annually as a national conference.

The *National Council for Taxpayer Advocacy* works to ensure that the Internal Revenue Service is responsive to taxpayers' needs by monitoring the quality and delivery of service and providing independent practitioner feedback and input regarding the performance of the IRS in serving customers and handling complaints. The Council attempts to serve as an unofficial advisory body to the IRS Taxpayer Advocate Service in an effort to help the National Taxpayer Advocate improve responsiveness by identifying problems directly affecting taxpayers and making recommendations for improvement of IRS systems and procedures.

Director - National Council for Taxpayer Advocacy

Bryan E. Gates, EA, a federally authorized tax practitioner, is the National Council for Taxpayer Advocacy Director. Mr. Gates communicates with Council members and Operating Division Taxpayer Advocates to develop discussion issues for each annual conference. Mr. Gates is a member of the National Society of Accountants currently serving on its Federal Taxation Committee. Mr. Gates is also a member of the National Association of Enrolled Agents, a former member of its Board of Directors, and former Director of Professional Education for the National Association of Enrolled Agents.